

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Federal Trade Commission v.  
OTA Franchise Corporation, et al.*  
U.S. District Court (C.D. Cal.) Case No. 8:20-cv-00287-JVS (KESx)

**Monitor's First Interim Status Report**

**REDACTED VERSION OF  
DOCUMENT PROPOSED TO BE  
FILED UNDER SEAL**

Thomas W. McNamara  
Regulatory Resolutions  
655 West Broadway, Suite 1680  
San Diego, California 92101  
Telephone: 619-269-0400  
Facsimile: 619-269-0401  
*Monitor*

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. Introduction ..... 1  
II. Scope of Monitorship..... 2  
III. Compliant Marketing Standard ..... 3  
    A. Prohibited Claims..... 4  
    B. Prohibited Misrepresentations ..... 4  
    C. Earnings Claims ..... 5  
    D. The “Net Impression” Doctrine ..... 6  
IV. The Universe of Marketing and Sales Materials to be Monitored ..... 7  
V. Compliance Review to Date ..... 9  
    A. OTA Website ..... 10  
    B. OTA Email System ..... 10  
    C. TV and Radio Ads..... 11  
    D. Social Media..... 11  
    E. Direct Mail ..... 11  
    F. Long Form Radio Infomercials..... 12  
    G. Half-Day Preview Classes ..... 12  
    H. Market Timing Orientation ..... 13

1 **I.**

2 **Introduction**

3 By the Preliminary Injunction entered April 2, 2020 (ECF No. 130, “PI”),  
4 the Court appointed me monitor of the Monitored Entities.<sup>1</sup> Section XIII.E of the  
5 PI directs that I report to the Court every thirty (30) days on the Monitored  
6 Entities’ compliance. This filing covers monitorship activities for the initial period  
7 of April 2, 2020 through May 2, 2020.

8 At the outset, I can report that OTA and its counsel have been cooperative  
9 and by all appearances are working to transition marketing materials to be  
10 compliant with the PI. They have submitted materials developed for a restart and  
11 have either suppressed, or are preparing substantiation for, materials we identified  
12 as non-compliant, even where they disputed our conclusions. The contents of a  
13 new Market Timing Orientation class remain problematic as we have identified  
14 many prohibited Earnings Claims which must be removed or substantiated.

15 We have identified some non-compliant claims, primarily claims within the  
16 PI’s broad definition of Earnings Claims, which appear in recently-aired radio  
17 programs produced by franchisees and in online Preview Classes produced by both  
18 OTA and franchisees. We have also found some residual student testimonials still  
19 available on the website and in social media which are non-compliant, but which  
20 OTA has agreed to remove.

21 ///

22 \_\_\_\_\_  
23 <sup>1</sup> Monitored Entities are defined in the PI as the Corporate Defendants (defined as  
24 OTA Franchise Corporation (also doing business as Online Trading Academy),  
25 Newport Exchange Holdings, Inc. (also doing business as Online Trading  
26 Academy), NEH Services, Inc. (also doing business as Online Trading Academy),  
27 and each of their subsidiaries, affiliates, successors, and assigns), “as well as any  
28 other entity that the Monitor determines is controlled or owned by any Corporate  
Defendant or Eyal Shachar and (1) conducted any business related to Defendants’  
advertising, marketing, distributing, promoting, or selling of trading or investing  
training programs, (2) commingled or pooled assets with any Corporate Defendant,  
or (3) otherwise participated in the transfer of assets stemming from the  
advertising, marketing, distributing, promoting, or selling of trading or investing  
training programs.”

1 The pause in significant operations occasioned by the TRO/PI and the  
2 COVID-19 pandemic has provided a window for OTA to address non-compliant  
3 marketing. But, particularly as to Earnings Claims which will require  
4 substantiation, the transition to compliant marketing will be a process. Despite the  
5 issues discussed in this report, OTA is currently engaged in that process and, as  
6 such, I cannot report that they are not in substantial compliance. As they move  
7 toward a more fulsome restart, however, I anticipate that the challenge to develop  
8 and implement compliant marketing will escalate.

## 9 II.

### 10 Scope of Monitorship

11 Section XIII of the PI directs that I monitor the Monitored Entities'  
12 compliance by (1) ensuring that the Monitored Entities record live sales events as  
13 described in Section XI<sup>2</sup>; and (2) identifying and reviewing marketing materials  
14 and other documents that reflect the Monitored Entities' "marketing, advertising,  
15 promotion, offer for sale, or sale of their trading or investing training programs,"  
16 including but not limited to specific marketing vehicles identified in Section  
17 XIII.A.2.<sup>3</sup>

18 The PI also includes prohibitions and directives not directly related to the  
19 recording of live events or marketing, including: a Prohibition on Restriction of  
20 Consumers' Speech (Section II); a Prohibition on Collection of Loan Payments  
21 (Section III); a Prohibition on Release of Consumer Information (Section IV); the

---

22 <sup>2</sup> Section XI requires Corporate Defendants to (A) record all Corporate  
23 Defendants' live sales events, "including, but not limited to, the Market Timing  
24 Preview, the Power Trading Workshop, and the Market Timing Orientation"; and  
25 (B) ensure that all multi-day sales events held or operated by franchisees are  
recorded.

26 <sup>3</sup> Section XIII.A.2 identifies the following specific marketing vehicles: "radio ads,  
27 television ads, direct mail, email, search engine advertising, Internet banner  
28 advertisements, websites, online videos, webinars, social media, live sales events,  
recordings of live sales events, including recordings of franchisee-owned training  
centers' events, handouts, slide decks, workbooks, telephone calls (both live and  
recorded), call logs, call detail records, and reports."

1 Preservation of Records (Section V); and multiple provisions relating to the asset  
2 freeze (Sections VI-X). I have not monitored for compliance of those provisions  
3 as I do not believe the monitor appointment in Section XIII includes them.<sup>4</sup>

4 OTA counsel has raised issues related both to the scope of the monitorship  
5 and the First Amendment, which may require clarification from the Court. In  
6 particular, OTA asserts that the PI Section I prohibition of certain claims in  
7 marketing and advertising does not apply to the three-day Market Timing  
8 Orientation classes because the material in those classes is protected educational  
9 speech. *See* Section V.G, *infra*.

### 10 III.

#### 11 Compliant Marketing Standard

12 The compliance threshold for the Monitored Entities' marketing materials is  
13 established by Section I of the PI, which prohibits specific categories of claims and  
14 misrepresentations. These prohibitions are, in turn, premised on the Court's  
15 express finding that "[t]he FTC has sufficiently demonstrated that Defendants, in  
16 marketing and selling trading and investing training programs, instructional  
17 materials, and related goods and services, have made false or unsubstantiated  
18 representations that consumers who purchase Defendants' programs will likely  
19 earn substantial income, any consumer can learn and use Defendants' strategy to  
20 earn income without significant investable capital or free time, and Defendants'  
21 instructors have amassed substantial wealth by trading in the financial markets."  
22 PI Finding B, pps. 2-3; *see also* Finding E, p.3.

---

23 <sup>4</sup> Section XIII provides "the Monitor shall have the following duties and authority:  
24 A. Monitor the Monitored Entities' compliance with this Order . . . ." This  
25 language suggests a broad mandate to ensure compliance with all aspects of the  
26 Order. However, this provision is followed immediately by limiting language  
27 which directs the Monitor to focus on marketing, advertising, and sales materials.  
28 Given the specific duties outlined in Section XIII, and our understanding of the  
Court's stated purpose in appointing a monitor as expressed during hearings, we  
have proceeded under the view that our duties are limited to reviewing materials as  
reflected in Section XIII. If the Court intended the Monitor to enforce the other  
provisions of the PI (*e.g.*, Sections II-X), the Monitor respectfully requests  
instruction from the Court to do so.

1 **A. Prohibited Claims**

2 Section I prohibits four categories of claims, expressly or by implication,  
3 when those claims are made “in connection with the advertising, marketing,  
4 promoting, or offering for sale of any goods or services”:

- 5 1. Earnings Claims. Section I.A. *See* detailed discussion below at  
6 subsection C.
- 7 2. Claims about the time or effort typically required for consumers to  
8 attain proficiency in deploying Defendants’ trading strategy. Section  
9 I.B.1.
- 10 3. Claims about the time or effort typically expended by consumers  
11 using Defendants’ trading strategy to make substantial income.  
12 Section I.B.2.
- 13 4. Claims about the amount of capital typically needed by consumers to  
14 effectively implement Defendants’ trading strategy. Section I.B.3.

15 These prohibited claims are, however, subject to a “safe harbor” exception in  
16 Sections I.A. and I.B. They are not prohibited if:

- 17 • The claim is non-misleading; and
- 18 • At the time the claim is made, Defendants (1) have a reasonable  
19 basis for the claim; (2) have in their possession written  
20 materials that substantiate that the claim or claimed earnings are  
21 typical for consumers similarly situated to those whom the  
22 claim is made; and (3) make the written substantiation available  
23 upon request to the consumer, the potential purchaser, the  
24 Monitor, or the FTC.

25 **B. Prohibited Misrepresentations**

26 Section I prohibits two categories of misrepresentations, expressly or by  
27 implication, when those misrepresentations are made “in connection with the  
28 advertising, marketing, promoting, or offering for sale of any goods or services:”

- 1 1. That instructors of Defendants' trading strategy are active traders who  
2 have amassed substantial wealth through trading in the financial  
3 markets. Section I.C.
- 4 2. Any material fact concerning any good or service, including, but not  
5 limited to:
  - 6 a. the total cost;
  - 7 b. any refund policy;
  - 8 c. any material restriction, limitation, or condition; or
  - 9 d. any material aspect of its performance, efficacy, nature, or  
10 central characteristics. Section I.D.

### 11 **C. Earnings Claims**

12 The PI's Earnings Claims prohibition restricts a core component of  
13 Defendants' marketing and operations: claims and discussions about trading  
14 results. The identification of the point at which such claims cross the line and  
15 become prohibited Earnings Claims is central to the Monitored Entities'  
16 compliance with the PI.

17 The definition of an Earnings Claim (PI Definition E, page 6) is expansive:  
18 "any representation to consumers, specific or general, about income, financial  
19 gains, percentage gains, profit, net profit, gross profit, or return on investment,"  
20 including, but not limited to, six specific types of claims. Two of the specified  
21 claims are "lifestyle" claims that are readily identifiable: references to quitting  
22 one's job, not having to work, or living off income from trading; and references to  
23 increased purchases or savings, including a home, vacations, or travel.

24 The other four specified claims relate to trading results where identification  
25 may be more nuanced:

- 26 • details of specific profitable trades, whether actual or  
27 hypothetical;

28 ///

- 1           •       claims that consumers will not lose money if they use a
- 2                   particular trading strategy;
- 3           •       claims that profits are likely, probable, or the “mathematical”
- 4                   result of applying a particular trading strategy;
- 5           •       any representation, even hypothetical, of how much money a
- 6                   consumer could or would earn.

7           The PI’s definition of Earnings Claims captures nearly every possible  
8           assertion or representation about trading results whether they are specific, general,  
9           actual, hypothetical, likely, probable, mathematical, express, or by implication.

10          Not all Earnings Claims, however, are prohibited. Those that fall within the  
11          “safe harbor” provision of Section I.A. are excepted – *i.e.*, the claims are excepted  
12          if they are non-misleading and Defendants have a reasonable basis that the  
13          claim/claimed earnings are typical for similarly situated consumers and can  
14          substantiate the claim/claimed earnings by written materials that are made  
15          available upon request. Since most trading-related claims fall within the broad  
16          definition of Earnings Claim, the analysis of whether they are prohibited will be  
17          focused on whether the claim is made “in connection with the advertising,  
18          marketing, promoting, or offering for sale any goods or services” and the  
19          availability of the safe harbor.

20          **D.     The “Net Impression” Doctrine**

21          Our review of marketing and other materials has been further informed by  
22          the “net impression” doctrine adopted by the Ninth Circuit. Under that doctrine, a  
23          claim or misrepresentation is prohibited if its “net impression” falls within the  
24          definition of the prohibition. This doctrine recognizes that even a truthful  
25          advertisement can create a misleading net impression. For example, fine-print  
26          disclosures might render an advertisement’s claims truthful, but fail to correct most  
27          consumers’ misleading impressions of it. *See FTC v. Cyberspace.com, LLC*, 453  
28          F.3d 1196, 1200 (9th Cir. 2006). In applying the doctrine, a court must make a



1 fact-intensive, common sense assessment of the net impression conveyed by the  
2 advertisement from the perspective of a reasonable person in the advertisement's  
3 relevant audience. *See, e.g., FTC v. John Beck Amazing Profits, LLC*, 2010 U.S.  
4 Dist. LEXIS 147113, at \*8 (C.D. Cal. Sept. 15, 2010).

#### 5 IV.

#### 6 **The Universe of Marketing and Sales Materials to be Monitored**

7 At the time of the Monitor's appointment, OTA's business was essentially  
8 suspended due to a combination of the need to retool content to comply with the  
9 TRO and PI and the COVID-19 pandemic. As such, we were not immediately  
10 faced with the challenge of identifying and reviewing large-scale, ongoing  
11 advertising campaigns and programs.<sup>5</sup> Rather, our review commenced with the  
12 limited universe of residual materials that remained active after the TRO was  
13 entered, as well as some new materials in development for a "restart." Our review  
14 of those materials is reported in Section V below.

15 At our initial meeting with OTA on April 7, 2020, management provided a  
16 summary of OTA operations and the customer acquisition process. Since that  
17 initial meeting, Defendants have provided our team access as requested to  
18 materials and internal systems necessary to conduct comprehensive monitoring as  
19 the business returns to full operations. Presently, we have access to:

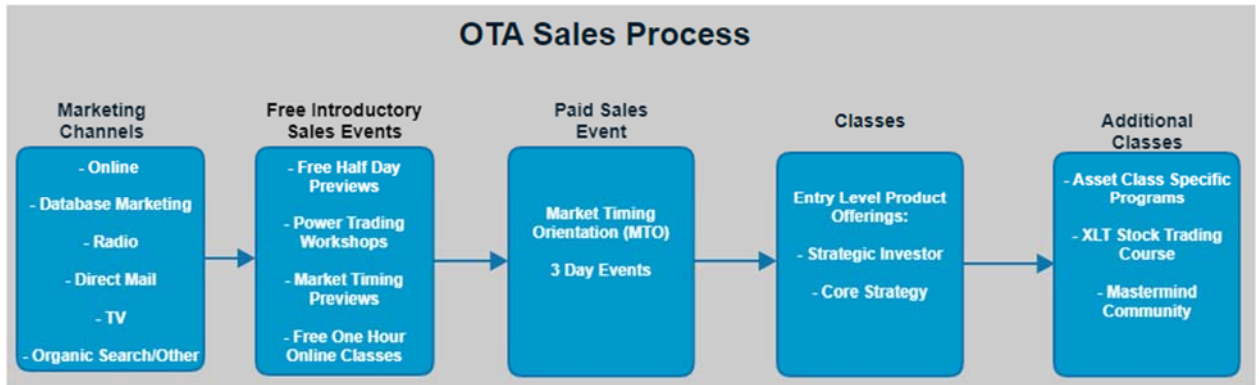
- 20 • Salesforce CRM Database, which houses sales leads, customer  
21 records, records of past and scheduled events, event registrations, and  
22 OTA's workflow for approving franchise marketing materials;
- 23 • Salesforce Marketing Cloud, which is used to manage email  
24 marketing campaigns and to maintain a record of materials sent by  
25 OTA to various mailing lists for marketing purposes;

---

26 <sup>5</sup> A small number of the advanced OTA classes have continued online, and OTA  
27 and a few franchisees have offered a limited number of online half-day preview  
28 classes in the last month (almost certainly less than 20 and probably closer to ten  
unique classes), as discussed below. For reference, management reported there  
were 3,000 on-location OTA classes in 2019.

- 1 • MyOTA, which is a platform that gives students access to their  
2 purchased courses, plus other course offerings promoted by OTA to  
3 existing students (OTA employees are also given MyOTA credentials  
4 to access employee-facing resources);
- 5 • Network Connection, which is an internal platform that houses  
6 internal materials for employees and franchisees;
- 7 • Sisense, which is a data visualization platform used to track the  
8 performance of OTA marketing campaigns and other business  
9 initiatives; and
- 10 • OTA emails of most customer-facing employees, of which we have  
11 identified the emails of Education Counselors as being of particular  
12 importance and a review priority.

13  
14 The OTA customer acquisition process is summarized in the graphic below:



15  
16  
17  
18  
19  
20  
21  
22 OTA uses a number of marketing channels to bring students to their free  
23 half-day classes (entitled Market Timing Previews or Power Trading Workshops).  
24 These channels include Online ( ), Database Marketing ( ), Radio ( ),  
25 Direct Mail ( ), Television ( ), Organic Search ( ), and Other ( ).  
26 Except for some limited outbound phone and email activity to individuals within  
27 their internal CRM database, we were advised that all channels were essentially  
28 inactive as of April 2, 2020.

1 Customers who attend the half-day events are encouraged to sign up for  
2 OTA's three-day Market Timing Orientation at a cost of \$199-299 (sometimes  
3 available for \$49). Customers who attend the Market Timing Orientations are  
4 presented course content by instructors, including slides, workbooks, handouts, and  
5 white board displays. Each consumer is also assigned an Education Counselor  
6 during the sales process to develop an "Educational Plan." Both the instructors  
7 and the Education Counselors are paid commissions on student enrollments  
8 generated from the Market Timing Orientation events.

9 While most marketing emanates from OTA headquarters, some franchises  
10 also generate materials for their local markets. In particular, the Minneapolis  
11 center produces a radio show (discussed *infra*) that is used by at least one other  
12 franchise.

13 As a monitoring tool, we have prepared a schedule of the marketing vehicles  
14 used at various stages of a consumer's enrollment by OTA. *See* Exhibit 1. When  
15 the business returns to full operations, this schedule will represent our roadmap for  
16 the identification and review of marketing and sales materials.

## 17 V.

### 18 Compliance Review to Date

19 During this first 30 days, our review initially focused on materials available  
20 to consumers through the OTA website and limited new materials in development  
21 for a restart. We also identified the free, half-day previews being offered by OTA  
22 and franchisees as an early focal point for our review.<sup>6</sup>

23 To conduct elements of the review, we assembled and trained a group of six  
24 reviewers who have been and will be assigned specific materials to review or OTA

---

25 <sup>6</sup> For franchisee-owned training centers, Section XI of the PI requires them to  
26 record multi-day live sales events. However, Section XI does not require  
27 franchisee-owned training centers to record the free, half-day previews. A limited  
28 number of franchise preview events are being offered (in a live online format).  
Since they are not recorded, and [REDACTED] of consumers who attend the preview pay to  
attend a Market Timing Orientation, it was important to quickly review these  
preview events.

1 events to attend. These reviewers will identify compliance issues in the materials  
2 they review or events they attend, which will be further reviewed by me or others.  
3 To date, reviewers have reviewed seven half-day previews, four long-form radio  
4 programs, social media accounts, PowerPoint presentation slides, and OTA's  
5 website.

6 Throughout the course of our review, Defendants and their counsel have  
7 been fully cooperative and responsive, although they are not always in agreement  
8 with our findings.

9 **A. OTA Website**

10 The OTA website is an interactive resource for prospective and current  
11 students. At the time of our appointment, the website was fully operational.  
12 Consumers could visit the website, read about OTA's various offerings and student  
13 reviews, identify the nearest OTA location, and sign up for the free preview  
14 session, among other things. At our initial meeting with OTA management and  
15 counsel, we identified two student testimonial videos ("Jason T." and "Chuck P.")  
16 that were non-compliant with the PI. Although most of the Jason T. and Chuck P.  
17 videos were immediately removed, the videos remained viewable via two domestic  
18 franchise webpages, but after we flagged this, the videos were removed. We also  
19 identified a number of videos available on international franchise webpages that  
20 were not compliant with the PI. After identifying the non-compliant marketing  
21 materials, OTA removed these videos.<sup>7</sup>

22 **B. OTA Email System**

23 After addressing potential attorney-client privilege and work-product  
24 protection issues, OTA provided access to certain email accounts late last  
25 Thursday, April 30, 2020. While we are in the preliminary stage of our review, we  
26 did identify non-compliant marketing material routinely sent to consumers by one

---

27 <sup>7</sup> Although these videos were removed from the webpages at our request, we have  
28 since discovered links to certain non-compliant testimonials on OTA and  
franchisee Facebook pages.

1 Education Counselor. *See* Exhibit 2.<sup>8</sup> The email includes a link to a video  
2 recording of Sam Sieden discussing a “low risk” trade and a screenshot of student  
3 feedback discussing the amount of profit they made (“made 11k on Sams Gold  
4 zone . . .”; “I Made lunch & dinner money plus more . . .”). We will continue our  
5 review of OTA’s email system and address any non-compliant marketing materials  
6 with OTA.

7 **C. TV and Radio Ads**

8 Defendants submitted three proposed TV advertisements (and possible  
9 website ads), one 60-second and two 30-second, and the script for a proposed  
10 short-form radio advertisement. We did not identify any non-compliant statements  
11 in these materials. As discussed further *infra*, some franchises are presently airing  
12 long-form radio programs that could be described as “infomercials” and which  
13 contain non-compliant statements.

14 **D. Social Media**

15 Defendants maintain social media accounts at Facebook, LinkedIn, Youtube,  
16 Instagram, and Twitter. These accounts have been inactive since the entry of the  
17 TRO and OTA’s social media manager has recently departed. Our review of  
18 marketing materials on these platforms is in its early stages.

19 **E. Direct Mail**

20 Defendants submitted three separate proposed direct mail pieces. These  
21 pieces generally promoted OTA’s educational benefits more than hyperbolic  
22 claims about trading successes. But, we identified some compliance issues:  
23 statements within the PI’s definition of Earnings Claims as to which we requested  
24 substantiation; time/effort claims which downplayed the time and effort necessary  
25 to master the trading strategy; and statements about 94% student satisfaction as to  
26 which we requested substantiation. Defendants reserved their right to re-address  
27 and/or contest our concerns, but represented there are no immediate plans to re-

28 <sup>8</sup> We added highlights to the non-compliant marketing materials.

1 start direct mail advertising and they would submit revised advertisements for our  
2 review, when that occurs.

3 **F. Long Form Radio Infomercials**

4 From schedules posted on the OTA website, we assigned members of our  
5 review team to listen to four one-hour radio programs.<sup>9</sup> All four shows appear to  
6 be produced by the Minneapolis franchise and are entitled “Retire Young.” The  
7 program features a conversation between two individuals (Al and Josh) who are  
8 affiliated with OTA, and promotes OTA’s courses and core strategy. Some of the  
9 four pre-recorded programs appeared to be re-airings of past programs, but all  
10 focused on the same themes.

11 Our review of these radio “infomercials” identified Earnings Claims and  
12 other claims that were not compliant with the PI, including:

- 13 • Earnings Claims. Al and Josh pitch OTA’s program as a way to make  
14 money in the economic downturn, a strategy that works well regardless  
15 of which direction the market is going, and puts the odds in your favor  
16 with low risk, high reward, high probability market entry points.
- 17 • Time/Effort Claims. Al and Josh claim that consumers can make money  
18 regardless of age, skill or capital and can achieve retirement goals by  
19 devoting only a few hours of time per day or week.

20 See Exhibit 3 for specific examples of the claims identified in these radio programs  
21 which would require substantiation.

22 **G. Half-Day Preview Classes**

23 The free, half-day preview class (*i.e.*, the Market Timing Preview or Power  
24 Trading Workshop) is a key component of OTA’s marketing, as it introduces  
25 consumers to OTA and encourages them to enroll in the three-day Market Timing  
26 Orientation. To our knowledge there are no in-person classes occurring on-

27 \_\_\_\_\_  
28 <sup>9</sup> Two of these programs originated from the Chandler, Arizona franchise; the  
other two from the Scottsdale, Arizona and the Minneapolis, Minnesota franchises.

1 location at this time due to the COVID-19 pandemic and stay at home orders, but  
2 we identified franchisee and corporate online classes available through the OTA  
3 website. Members of our review team signed up for and attended seven such  
4 classes.<sup>10</sup>

5 Our review identified claims that fell within the broad language of the PI's  
6 Earnings Claims and other prohibitions and for which we have either not received  
7 sufficient substantiation or which are too general to substantiate, including:

- 8 • Earnings Claims. These range from macro (“generate income”, “make  
9 your financial dreams a reality”) to specifics of how the OTA Core  
10 Strategy will identify high probability opportunities, control the risk, and  
11 lead to the consumers making more on winning trades than they will lose  
12 on losing trades, with the strategy demonstrated by hypothetical trades  
13 with high risk/reward ratios. While there were a few implicit “lifestyle”  
14 claims, these were generally rare.
- 15 • Time/Effort and Capital Claims. Instructors told consumers that they  
16 could use an S.E.T. (stop, entry, target) strategy to minimize the time  
17 they would need to spend at a computer, suggesting that students could  
18 just enter the data points and go to the beach or take a walk while the  
19 trade played out. Other instructors used example trades with low capital  
20 amounts and highlighted how leveraged options programs require  
21 minimal capital.

22 See Exhibit 4 for specific examples of claims which we identified in these preview  
23 classes which are not compliant with the PI unless they fall within the safe harbor.

24 **H. Market Timing Orientation**

25 On April 24, 2020, OTA provided the recording links to an updated three-  
26 day Market Timing Orientation (“MTO”) class with instructor Darren Kimoto

27 \_\_\_\_\_  
28 <sup>10</sup> These classes originated from the corporate headquarters, the Kansas City franchise, and the Baltimore/D.C. franchise.

1 which they identified as a template for future MTOs. We reviewed the first and  
2 second day and the attendant PowerPoint slide deck. That review highlights that  
3 the MTO presents significant compliance and compliance review challenges both  
4 at present and going forward.

5 Our review found that a high percentage of all statements made about  
6 trading results fall within the PI's definition of an "Earnings Claims" and are,  
7 therefore, prohibited unless they are non-misleading and OTA has a reasonable  
8 basis for the claim which can be substantiated. The MTO contained numerous  
9 such statements.

10 By letters dated April 28 and April 30, and telephone conferences, we  
11 identified to OTA's counsel statements in the MTO which fell within the PI  
12 definition of Earnings Claim and requested substantiation. OTA's counsel  
13 responded by letter of May 1, and while agreeing to suppress the slides and content  
14 we identified, they took the position that MTO sessions were paid educational  
15 classes which have First Amendment protections, and that the Earnings Claims  
16 made therein were therefore not made in connection with advertising and  
17 marketing and not subject to the PI prohibitions. We responded by letter on May 3  
18 and in a telephone call on May 4 in which we, among other things, disagreed with  
19 the assertion that MTOs are not sales events and invited OTA to make its legal  
20 challenge with the Court.

21 As Monitor, I must be guided by the terms of the PI which extends to the  
22 MTO. Section XIII directs me to ensure that "live sales events" are recorded as  
23 required by Section XI and includes "live sales events" in the recitation of  
24 marketing materials to be monitored. Section XI, in turn, directs Defendants to  
25 record all Corporate live sales events, expressly including the MTO, and ensure  
26 that the franchises record all three-day live sales events, again expressly including  
27 the MTO. Section I prohibits certain claims (including Earnings Claims) and  
28 ///



1 misrepresentations if they are made “in connection with the advertising, marketing,  
2 promotion, or offering for sale of any goods or services.”

3 While the MTO is ostensibly an educational presentation, it is also a live  
4 sales event which is a component of OTA’s marketing progression. Indeed, it is  
5 the most critical element of OTA’s sales process. Students in the half-day free  
6 Preview Class are encouraged to enroll in the MTO offered for \$199-\$299 (and  
7 sometimes discounted to \$49). At the MTO, students are encouraged to enroll in  
8 the more expensive advanced courses. The students are assigned Education  
9 Counselors who maintain contact with the students before, during, and  
10 immediately after the MTOs. The Education Counselors are commissioned  
11 salespersons – they receive █████ of all enrollment fees paid by their students for  
12 follow-on classes. Similarly, the MTO instructors are commissioned. They  
13 receive █████ of all student enrollments for follow-on classes. And the fees for post-  
14 MTO courses are substantial, as high as \$50,000 or more, providing a significant  
15 incentive for the salespeople.

16 OTA management has indicated that █████ of the consumers at the Preview  
17 Class go on to attend an MTO and █████ of the MTO attendees enroll in advanced  
18 classes with substantial enrollment costs. These enrollments generate █████ of the  
19 company’s overall revenue.<sup>11</sup>

20 As noted, we invited OTA to raise their educational First Amendment issues  
21 with the Court. Absent a change in guidance from the Court, we believe the MTO  
22 Earnings Claims identified in our emails, conversations, and letters are prohibited  
23 unless properly substantiated. And given this full and frank discussion and the fact  
24 the PI has been in place for one month, going forward, if Defendants make  
25 prohibited Earnings Claims it may result in a prompt determination and report to

26 ///

27 \_\_\_\_\_  
28 <sup>11</sup> The remaining █████ of OTA revenues are generated by add-on sales to students  
already enrolled in █████ other OTA core/advanced class.

1 the Court that the Monitored Entities are not in substantial compliance with the PI.  
2 *See* Section XIII.G.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: May 4, 2020

By: Thomas W. McNamara  
Thomas W. McNamara  
Monitor

# EXHIBIT 1

**Schedule re: Universe of OTA Marketing, Advertising, and Sales Materials**

1. Marketing and Advertising to Enroll Consumer in Preview Class

Online Marketing and Advertising

Search Engine Ads

Internet Banner Ads

Websites

Online Videos

Webinars

Social Media

Facebook

Youtube

Instagram

Twitter

Internal Database Marketing

Outbound Telephone

Direct Mail

Email

SMS

Radio

Short Form

Long Form

TV

Short Form

Long Form

Direct Mail

Purchased Lists

Internal Database

Organic Searches

Google

Etc.

2. OTA Processing of Incoming Calls and Online Enrollments

Telemarketers Receive Incoming Calls

Auto-responses to online enrollments

Pre-Class communications

3. Live Sales Events

1/2 Day Market Timing Preview

3 Day Market Timing Orientation

Recordings of Instructors Presentations

Slide Decks

White Boards

Handouts

Workbooks

**Schedule re: Universe of OTA Marketing, Advertising, and Sales Materials**

- 4. Education Counselors
  - Multiple points of contact with consumer
    - Email
    - SMS
    - Telephone
    - In-person during MTO
  - Education Plans
  - Income and Wealth Plan
- 5. Franchisees
  - OTA-produced Materials
  - Local-produced Materials
  - OTA policing and enforcement

# EXHIBIT 2

## Your Upcoming Market Timing Orientation

[REDACTED] <[REDACTED]@otahq.com>

Fri 5/1/2020 1:32 PM

To: [REDACTED]@gmail.com [REDACTED]

📎 3 attachments (263 KB)

The 4-Part Recipe for Success.docx; Plan It Set It and Forget It.docx; 7.27.18 Gold Trade XLT.pdf;

Hi Jethro,

Good talking with you the other day.

I have attached some Lessons from the Pros articles to this email to read up on. These are both written by Sam Seiden, who I have a lot of respect for. Read these and take them for what they are worth. If anything sounds unclear, don't worry, we'll cover these topics more during your 3 days with us beginning Monday at 7:00PM.

Also,

Here's a link to a live trade set up during one of our XLT's. I've attached some student feedback from that particular XLT.

<https://vimeo.com/282015264/e6567a7290>

Regards,

[REDACTED]



[REDACTED] | Education Counselor

Online Trading Academy  
145 Pinelawn Road. Suite 350 South. Melville, NY 11747

Direct: [REDACTED]

Cell: [REDACTED]

Fax: 631 759 2949

**A referral to your family and friends is the greatest compliment that you can give me.  
Thank you for your continued support and trust.**

## The 4-Part Recipe for Success



### Sam Seiden

*Online Trading Academy, Chief Education, Products, and Services Officer*

One of the most rewarding aspects of instructing for Online Trading Academy is getting to work with new students as well as teaching the Extended Learning Track (XLT) program with various graduates of Online Trading Academy. I also have the pleasure of welcoming new students to the world of trading and investing when I visit OTA centers around the world. Recently, I was in Seattle teaching our new 3 day class entitled; Market Timing, Education for Short Term Income and Long Term Wealth. This class is part of a program for people that are considering becoming a self-directed trader and investor. It covers core strategy, the multiple asset classes, and other key pieces of information you need to know before you get started. The goal of this program and class is to determine if trading and investing is right for you, if you are a right fit for Online Trading Academy and if you are, what asset classes will be the best solution for your needs and goals. Each time I have delivered this class, at some point in the class, I politely give someone their money back and ask them to leave. I do this because during the program/class, it becomes clear to me that they are simply not a good fit for trading and/or Online Trading Academy. Just like every other time I have talked to new and existing students, I make sure and tell them that before they start trading and investing, before they look at a chart and well before they even implement a strategy, it is critical to understand what it really takes to become a consistently profitable trader/investor. In my opinion, if one does not prepare themselves properly, they really are decreasing their odds for success well before they even click a buy or sell button. It is critical for every new trader to fully understand the disciplines required and more importantly, why they are required, right at the very start. In this piece, I am going to share the four key areas to focus on which will not only help you determine if self -directed trading is right for you but also help you to achieve your goals.

### Proper Education

Education is where the journey starts and unfortunately for many, this is where it ends as well. Most people say education is the answer when it comes to successful trading and investing in the financial markets, I completely disagree. Education is really why most people lose money and fail because most financial education is either very flawed



or intentionally misleading. “Proper” education is the answer and without it, you are likely to quickly find yourself time and time again on the wrong side of the market and with that, your hard earned money being transferred into someone else’s account. Many new traders forget that trading is a skill which needs to be honed and developed. It is a profession that requires superior skill and understanding as it is competition at its finest. Much like a doctor trains at medical school or a lawyer trains at law school, successful traders have also been trained and educated in a very similar fashion. To learn how to do a job well, one needs to be instructed by someone who is already doing that job and who can do it effectively. However, many hopefuls decide early on in their trading career to skip the education process and jump right in, good luck. Ask yourself an honest question: What are the chances of this working? If trading was as easy as just diving in with very little understanding or guidance from a professional, then everyone would be doing it and making money. As mentioned above, trading is extreme competition. Each and every time you push the button to place a trade, there is someone on the other side of that trade trying to take your money. The trader who is more informed, properly educated in the profession of trading is typically going to come out ahead.

The stark reality, though, is that the vast majority of speculators out there end up failing. The facts don’t lie, yet many choose to ignore this prospect and think that things will be different for them. The alluring thing about the market is that it tempts the newcomer with dreams of easy money and wealth, and with humans being the emotional creatures we are, these temptations usually end in frustration. One of the many pitfalls of trading is that it is easily accessible and anyone can get online and open an account in a matter of minutes. Does this mean then that we should take this route? It’s almost like believing anyone could perform open-heart surgery after reading a book about it...not likely. So, while I am certainly not pushing you to trade on your own.. If you do decide to become a self-directed trader or investor, make sure you really understand what you’re doing before you get started.

## **Discipline**

Once you have received the right education, you now have the tools to do your job but this does not mean that it’s smooth-sailing from the very start. Consistent success is gained from a consistent set of actions and proven rules. There are a few ways you can achieve profits in the market and each trader needs to decide which tools are the right ones for them. Will you be a short term trader for income or a long term trader for wealth? Which asset class or classes will you trade? These questions and more need to be answered as the last thing anyone needs is doubt in their strategy when they are live in the market. A sound trading plan needs to be adhered to from the very start and the rules have to be in place. As a trader gains more experience in the markets, they will no

doubt develop their skills to new levels, but from the very start the rules need to be set. It takes discipline to adhere to profit targets and stop losses, to know why you are buying or selling and to repeat the process over and over again.

In fact, trading actually becomes quite boring after a while like other jobs where the goal is to attain more money. The difference with trading is that it takes up far less time than most other careers if you do it right. Once again, like in any profession, there are ways to do it right and many ways not to. One of the many traps I have seen new traders fall into is changing a solid strategy for the wrong reasons. Sometimes, when a new trader finds success with some consistent winning trades early on, everything is great. Then, they fail one or twice, leading the trader to then abandon the strategy in search of another with a higher rate of success. This is a dangerous approach, as it can lead to a game of holy-grail chasing which often ends with further frustration for the new market speculator. If you can have the discipline to accept that no one strategy will have 100% winning trades and stick to your rules over a sustained period of time to ascertain the strategies real potential, then and only then will you have a chance at sustained success. After all, following a set of rules shouldn't be that hard yet I see this as a challenge and potential pitfall for the new market speculator.

### **Patience**

It would be great if proper education and discipline were enough but I am afraid not. Patience is a key piece to the trading puzzle and it comes in three forms. First, you need to have the patience to let the market come to you. Meaning, your rule based strategy identifies the low risk, high reward, and high probability trading opportunities in the market. It tells you exactly at what price to enter and exit the market. So, you will find yourself waiting for market prices to come to your key entry and exit prices and that can take time sometimes. People in general like to be doing things, taking action, not waiting. This is in direct conflict with success in the trading world. You must have the patience to wait for market prices to come to your pre-determined entry and exit points. Second, once you're in a trade, you must have the patience to let the trade work out as planned, win or lose. I have seen so many times new traders enter a trade as planned, only to cut the profit short and/or remove a stop loss order from the market because they didn't want to take a loss! This is account suicide. Third, you must have the patience to let your newly learned skill turn into a profitable trading career. Many make the mistake of being a little too eager to pull the trigger when they sit down at their computer and end up clicking buttons a bit too often. They think that just because they took some education, they have the ability to immediately start making money right away. Be realistic with your new skill. It's very much like taking your driving test: the minute we pass doesn't mean we are ready to drive a Ferrari.

### **Proper Strategy**

Truth is, there are not many ways to make money in the markets. You buy low and sell high, period. This means having a strategy that helps you identify market turns and market moves in advance, with a very high degree of accuracy. Knowing that the only thing that causes market prices to turn and move is significant demand and supply, your strategy must do a very good job of objectively quantifying demand and supply in any and all markets. This needs to be the foundation of your strategy whether it is for short term income or long term wealth. Knowing what the picture of real bank demand and supply looks like on a price chart is key. Whether you use price and price alone like we do at Online Trading Academy or conventional technical analysis like the trading books teach, real market supply and demand needs to be the foundation of your strategy. Make sure you have VERY specific rules for this which will then allow you to have your entries and exits 100% rule based.

As I said earlier, if I suspect a new student clearly doesn't understand one of these four key items above or dismisses them as not important during the Market Timing Program, we encourage them to not get involved in the markets and Online Trading Academy as the chances for success are slim.

Think of the skill to fly an aircraft and the discipline needed to follow your plan. You first go to school to learn the rules and skill and then you train with someone for a while who is already an experienced pilot. This takes time and the highest amount of discipline as following rules is a matter of life and death. While losing money in the market is not life or death, the key personal traits needed when speculating in markets is not all that different from those needed to fly.

Hope this was helpful, have a great day.

Sam Seiden

## Plan It, Set It, and Forget It



### **Sam Seiden**

*Online Trading Academy, Chief Education, Products, and Services Officer*

From birth, we are conditioned to trade incorrectly. We naturally run from things we are fearful of and are drawn to things that make us feel good. If you take this action in trading, you are headed for trouble which in the trading world means losses. For example, if your invitation to buy into a market comes only after an uptrend is well underway, all the indicators are pointed up, and the news is good on that market, where do you think price is in that market? Yep, it's likely very high. To buy here completely goes against how you make money buying and selling anything and is very high risk. Never forget, when you buy, many people have to buy after you and at higher prices or there is no chance you will profit in your trade. To obtain an entry that allows you to buy before others and at price levels where the risk is low, most of the time (if not all the time) you are buying at the end of a downtrend, when most indicators are pointing down, and when the news is bad. This action is completely against our mental make-up. As I said before, we are conditioned from birth to trade incorrectly. That action or belief system is often reinforced during the many years of traditional finance/economics high school and college education. For example, most college courses on markets teach to us to do plenty of research on a stock before buying into that market. The general rule is to make sure the company has good earnings, good management, is a leader in its industry, and has a stock price that is in a strong uptrend. Again I ask you, where do you think the price of the stock is when all this criteria is true? Almost always, the stock price is very high when this criteria is true which ensures that if you buy now, you are simply paying everyone else who bought before you at lower prices. I am not suggesting you should not buy the stock when this criteria is present. I am however suggesting you should wait and buy it when price declines to wholesale levels (demand).



In my opinion, there are two things that you must have if you are to succeed at trading for a career. First, you must have a solid understanding of how a market really works and a rule based strategy based on the objective laws of supply (retail) and demand (wholesale). Due to very little regulation in the trading/investing education industry, most people learn to trade completely wrong from someone who is good at marketing but not so good at trading. This ensures that many people who attempt to trade will fail as they never learn how a market or trading really works and instead, are poisoned with trading education and information that has them buying high and selling low. This path is fraught with lagging indicators and oscillators and conventional technical analysis information that leads to high risk, low reward trading and investing. Second, you must have the discipline to follow your rule based strategy. The lack of discipline factor likely eliminates many aspiring traders which leaves a select few that ever make it. Before you stop reading this piece and throw it into your fire place because it is so negative, sit tight and read on, help is on the way...

I have been trading Stocks, Futures, Forex, and Options for many years and being around new traders at Online Trading Academy, I see so many people come into the program not having the two most important pieces of the trading puzzle mentioned above. Let's go over some trades from in the XLT program in hopes that you will get closer to having a solid understanding of how proper trading and markets work and then we will deal with the discipline issues that can be so challenging for new traders.

XLT Trade – 12/19/13: Copper Futures Income Trade (short)

Here is a typical income trade that we pre-planned in XLT. We first identify Demand (wholesale, where we want to buy) and then Supply (retail, where we want to sell). Next, we are very happy to sell to someone who wanted to buy after a rally in price and at our predetermined supply level as that is the low risk / high reward / high probability time to sell for us. Understand that the laws of supply and demand ensure that the buyer who buys after a rally in price and at price levels where supply exceeds demand will most often lose so we use our rule based strategy to make sure we are there to take the other side of that trade and sell to the ill-informed buyer. Next, as price declined to our pre-determined demand level below (blue line), we bought and took profit. Who did we buy from? We bought from the trader who is making the same two mistakes every consistent losing buyer and seller of anything makes. First they are selling after a decline in price, mistake number one. Second, they are selling at a price level where the chart is suggesting, demand exceeds supply. Simply put, because the basic human brain is wired to buy when everyone else is buying and sell when everyone else is selling. The smart money is in way before this. That's why they have all the money, it's given to them.

The Answer

If you think I or members of the XLT are able to take these trades because we have somehow de-humanized our brains and have some super powers that only successful traders have, think again. We think and feel much of the same things everyone else thinks and feels. The key is that I realized years ago that my human brain is flawed when it comes to proper trading and has the potential to be my own worst enemy so I make sure I do my objective rule based analysis based on the laws of supply and demand and then take full advantage of today's fantastic order execution capabilities to make sure emotion never even has a chance to come into my trading world. "OCO" (order cancels order) – one of the most important tools in trading. I am able to enter an

order to buy at demand, enter a protective stop order to limit the risk because you (and I) will have losses from time to time, and also enter a limit order to take profits, all at the same time. Once I set up that order and execute it, I am hands off for that entire trade from start to completion. This accomplishes two things for me and people in the XLT. First, it takes care of the emotions and second, it means we don't have to sit in front of the computer screen all day; life is way too short to do that anymore! Plan it, set it, forget it.

Today, just about any type of order you can think of is available. I used a custom API which is a custom version of a typical OCO but you don't need that anymore, everything is available. I encourage you to begin to take advantage of the opportunity to set and forget your short term income and long term wealth trades.

As always, never forget that those who know what they are doing in the markets simply get paid from those who don't so make sure you have the two issues discussed in this piece figured out before you put your hard earned money at risk.

Hope this was helpful, have a great day.

Sam Seiden –

# GOLD

# Live Market Timing

# Friday 7/27/18

## Buy at Demand – The Result

CHAT - Supervised

basquemig 7:36 AM  
@PLV18 hit 5 min candle wick and pulled back sharply

doug myers 7:36 AM  
Joann remember what I mentioned yesterday about facebook earnings?

**sdBob 7:36 AM**  
made 11k on Sams Gold zone on the spike...  
#tradinginthesky

TMARSHALL 7:36 AM  
Trader50 I caught that HG trade yesterday

Joann Farley 7:36 AM  
nice

KevsFarm1 7:36 AM  
all while over Tennessee SD?

chloe9908 7:36 AM



Profit Target

Buy

Fri 7/27/2018 7:41 AM

Robert [redacted] GC Day Trade

To sseiden@tradingacademy.com

You forwarded this message on 7/27/2018 7:44 AM.

Sam,

Thanks for the quick GC day trade this morning. 4:1 in 10 minutes.

I love your session!

Rob Harmon

edit.s 1 1:06 PM

Good morning Evan. I Made lunch & dinner money plus more on NQ, ES, & YM this morning. Thanks to all OTA instructors.





# EXHIBIT 3

### **Monitor Review of 4 Radio Programs Examples of Claims Prohibited by PI**

Members of the review team listened to four radio programs (two from Chandler, one from Scottsdale, and one from Minneapolis), all titled “Retire Young,” hosted by Al and Josh who are affiliated with OTA, and all containing primarily the same content. Although the hosts promoted OTA’s courses and core strategy, we understand this radio show is franchisee-produced content.

#### Earnings Claims:

- Throughout the program, the two hosts, Al and Josh, pitched OTA’s program as a way to make money during the economic downturn, regardless of age, skill level, or starting capital.
- “Why not learn how to make additional money until it [the market] does come back?”
- “The markets provide great opportunities to generate additional cash.”
- With OTA’s strategy, the investor “can be wrong 50-60% of the time and still make money, if you know how to do it properly,” and can be “right 40-50% and still do really well” no matter “which direction the market is going.”
- The listener can “achieve their retirement goals,” and there is a possibility that “you could be doing better than you are doing right now for a few hours of your time.”
- OTA’s strategy is not the “typical wall street approach,” but a way of “making sure that no matter what the market is doing, number one, you don’t have to have big losses, and number two, you can benefit from what[ever] direction” the market goes.
- “[Y]ou choose the life you want to live based on how you are taking advantage of the opportunities that are out there.”
- “[W]hy not learn how to generate some additional cash while [the market] is coming back...[with the] potential to do better...Understand that there are always different opportunities to do better...and that you just need education.”
- “Number one, just to understand that there is a strategy that’s part of our educational process that is a strategy that all of our students use for any asset, regardless of what your style is, whether you’re a short-term trader, long-term investor, you’re going to use the same strategy. This keeps it simple, and the great thing about it is that it takes the thinking, as much as possible, out of your-your investments...[T]his strategy is a step-by-step process, it’s a methodical process, you just follow, you go right down the path, 1-2-3-4-5-6, the end result is almost like a sign saying yeah, this is a good quality investment or no, don’t do this, it’s a bad investment, and that’s all part of using our core strategy with the CliK platform that all of our students have access to. This is what helps you to know that you’re using something that’s been shown to work on a repeatable basis but is kept simple . . . .”
- Discussing OTA’s 3:1 reward to risk ratio, and stating, “Every dollar that you put at risk you want to make a minimum of 3 times that. That doesn’t mean that you’re going to make just three times that, it could be much higher than that, but if you have that as a minimum...You can lose half your trades or more and still make money if you have the proper risk/reward ratio.”

- “You put the odds in your favor with low risk, high reward, high probability entry points. And you talked about that 3 to 1 win to risk ratio...if you’re right 3 out of 10 times, you should be doing okay...You have to have that strategy but you have to follow that every single time...don’t go doing this without learning how to do it.”

Time/Effort/Capital Claims:

- Comparing trading to grocery shopping and asking, “Do any of you grocery shop? If you do, you’re doing exactly what you should do when you’re trading and investing,” such as making a list of investments/groceries to buy.
- Giving an example where an instructor of a class, in the time of showing the students how to set a trade, was able to already to make the sale, suggesting that trading can take very little time.
- “If you have a market [like the futures market] that’s open in the evening, say you work during the day, you can still participate – I mean, think about this, what if you’re able to work your regular job during the day and you can create another source of cash flow in the evening. What would that do for you? How would that change your life?”
- The listener can “achieve their retirement goals,” and there is a possibility that “you could be doing better than you are doing right now for a few hours of your time.”
- “Leveraged assets accessible to more people because you don’t need 20, 30, 40 thousand in a trading account.”

# EXHIBIT 4

### **Monitor Review of 7 Online Preview Classes Examples of Claims Prohibited by PI**

Review team members participated in seven online preview classes: one from Irvine, two from Kansas City, three that appeared to be a global broadcast (attended through the San Diego, Boston, and Tampa Bay centers), and one from Baltimore.

#### Earnings Claims:

Hypothetical trades and/or reward-risk ratios were frequent topics:

- Instructor presenting a hypothetical with four trades, where the consumer would break even if she were wrong on three, but if she were right on half, she would make “really good money” – \$200 per \$5,000 in an account. (Kansas City)
- Instructor stating, in the context of discussing an example of how to short, that if the price did in fact go down, “we would’ve made \$1.50 a share.” (Kansas City)
- Instructor discussing a hypothetical stock trade before saying, “Now. What if we also did options? What if we did futures? Can you imagine taking that \$800 and potentially multiplying it by 5, 10, or 20?” (San Diego – Global)
- Instructor discussing a hypothetical trade (Microsoft) and stating that when a consumer “buy[s] with institutions,” she some can make 3:1, 5:1 or 7:1 – she can make money “on the way up and on the way down.” (Tampa Bay – Global)
- Instructor discussing a simulated trade prior to the beginning of the presentation and saying, “So that’s a 47 point move on the S&P 500 it’s \$50 a point or a regular mini contract...So, that’s a pretty significant opportunity with a \$5,000 position. And that’s part of the attractiveness of these, you know, shorter, the shorter time frames. And there are opportunities that present themselves most days.” (Baltimore)

#### Other Examples:

- “[T]he most popular [reason people come to OTA] is that they’re wanting to learn how to trade the financial markets . . . in an attempt to generate income [or] how to manage long term investment accounts, both protect them or grow them. I know all of the graduates in Kansas City and I can tell you that many of them eventually do both.” (Kansas City)
- “[I]f you are going to trade professionally, you’ve got to come to term with the fact that you’re going to lose on trades almost every day. But it doesn’t matter because just like the banks, we’re going to be making more on our winning trades than we are losing on our losing trades. . .” (Kansas City)
- “So for this reason alone, because it’s a leveraged asset, you make 10 to 40 times the income trading futures than you would stock. Okay. Now, if you’re an uneducated trader like say you’re someone who just rushes home and opens up a futures account and you don’t even know what a stop loss is, if you don’t have a stop on that trade, you could also lose 10 to 40 times what you would trading the stock. But you’re not going to do that. You’re going to have a 1% stop on each of your trades. So we have the upside potential without the downside potential.” (Kansas City)

- Including a slide with the name of a local instructor having a quote the bottom that read, “Make your financial dreams a reality.” (Kansas City)

The Baltimore program had a number of violations:

- “And part of our perspective is, you know most people’s assets are generally unproductive . . . single digit or negative returns, and what we want to do is identify opportunities where we get double digit or triple digit opportunities and that’s a much more worthwhile way for us to engage the markets.”
- “Our perspective is if we can help you find average or above average returns, and have a strategy to achieve them, that’s going to put you on a, accelerate your journey toward success.”
- “And that’s what our Core Strategy provides you is a systematic way to identify a safer place to buy and a safer place to sell. And that’s really the difference for Online Trading Academy versus other places, where they’ll give you the [?] step but they’re not going to give you a systematic way to identify where to buy and where to sell.”
- “And by doing that we’ll be able to protect ourselves from the downs and take advantage of some of the ups and also have some specific strategies to generate income going forward.”
- “With options it gives us opportunity for leverage, and we can use strategies for shorter-term income as well as protect ourselves, provide insurance for the future, and also to generate opportunities long term. And one of the cool things with options is we don’t have to tie up as much capital if we want to take advantage of moves in individual assets. So we can make money if things go up, we can make money if things go down, and there’s even strategies we can use to make money when things are staying the same.”
- “The real benefit [of OTA] is where should I sell that option where should I buy that option...the Core Strategy, it helps you identify where should I execute these different strategies. How can I do that in a way where I can understand the risk, reduce the risk, and target a greater reward.”
- Program including a slide titled WHAT’S YOUR “WHY”?, showing a picture of a checklist with the following: “More time with family”; “Create a legacy”; “Protect my investment”; “Travel!”; “Create multiple streams of income”; “Become debt free,” implying that a student taking OTA’s classes could achieve these goals.

Time/Effort/Capital Claims:

- An Irvine instructor discussed the “stop, entry, and target” (or “S.E.T.”) trading strategy, whereby a consumer would input these data points and afterwards, “you can walk away, you can go to the lake, a beach, a forest, or go take a walk, go to the mall,” implying that relatively little time is needed to trade. Similar examples included:
  - When discussing the 3:1 reward-risk ratio noted above, instructor pointing out that consumer would only need to make four trades to implement a 3:1 reward-risk ratio, and noting that this type of trading strategy was used by people who can only spend 1 or 2 hours a day on trading. (Kansas City)
  - “So now we have our S-E-T. Stop, entry, target. And we can set it and can forget it. And if it comes down here, boom, we’ll automatically buy it. And we only

- have two outcomes, small loss or nice gain, ideally a 3-to-1, boom, bounces up, you have a nice little gain up there.” (San Diego – Global)
- “Particularly [in the futures market] in the morning, like from five in the morning till eleven in the morning, there’s opportunities where you can look for a set ups and, you know, do that while your coffee is brewing, and then go about your day. Set up your trade and then see at the end of your day whether you made money or not.”
  - When discussing use of the OTA analytic tool, instructor saying, “[Y]ou don’t have to sit in front of a computer all day...[Y]ou get to choose which timeframe works best for you. That’s what I love about it. Our core strategy works on all timeframes. You know, ultra short to ultra long as well.” (San Diego – Global)
  - Instructor stating that the core strategy “works on anytime frame” and giving examples of how much time a consumer could devote to it, such as half an hour to one hour per day or one hour per week. (Boston – Global)
  - “And then it’s, how do you fit this in...maybe it’s getting up, you know, earlier in the morning, maybe doing it in the evening, maybe do it on the weekends. But the goal is to carve out time where you can focus on getting your money more productive.” (Baltimore)
  - “Okay, and so part of our mission is that and also find out for you, what is the right fit for your current lifestyle and your personality...Most of our students do this two or three times a week. Or once a week. At a minimum, to do this effectively, you really need to dedicate at least once a week where you’re going to spend a couple hours looking for opportunities.” (Baltimore)
  - A number of programs used trade examples where the amount traded was as low as \$1 or \$10, suggesting that very little capital is needed to trade.